



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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REPORT

by Nils Muižnieks
Commissioner for Human Rights of the Council of Europe

Following his visit to Albania
from 23 to 27 September 2013

Summary

Commissioner Nils Muižnieks and his delegation visited Albania from 23 to 27 September 2013. In the course of the visit the Commissioner held discussions with state authorities and non-governmental, national and international organisations. The present report focuses on the following human rights issues:

I. Major issues pertaining to the administration of justice

The Commissioner is concerned by the reportedly high level of corruption in the judiciary which seriously impedes the proper functioning of the justice system and undermines public trust in justice and the rule of law in Albania. While welcoming the 2012 amendment of the Albanian constitution that limited the immunity of judges, the Commissioner urges the authorities to step up their efforts to ensure that all cases of corruption in the judiciary are effectively investigated and prosecuted. Judges' salaries also need to become commensurate with the significance of their service and responsibilities. The Commissioner is concerned at the reported lack of transparent and merit-based appointment and evaluation of judges. The authorities are called upon to ensure that the selection and career evolution of judges are always based on merit, in line with the Council of Europe Committee of Ministers' [Recommendation No. CM/Rec\(2010\)12](#). The independence of the High Council of Justice should be further strengthened by the necessary legislative amendments which would provide for a qualified majority for the election by the parliament of High Council of Justice members. It is underlined that the High Council of Justice should have decisive influence on the appointment and promotion of judges and on disciplinary proceedings. The authorities are therefore called upon to take the necessary measures to ensure that the Minister of Justice is no longer involved in disciplinary proceedings concerning judges. The Commissioner also notes with concern that the current system of appointment of Supreme Court judges and the General Prosecutor poses a serious risk of improper political influence. He calls on the authorities to adopt the necessary constitutional amendments which would provide that the main role in the appointment of Supreme Court judges is given to the High Council of Justice. The authorities are further invited to take the necessary legislative measures which would provide for a qualified majority in the parliament's vote and consent concerning the appointment of the General Prosecutor by the President of the Republic. The Commissioner welcomes the Albanian authorities' request to the European Commission for Democracy through Law ("Venice Commission") to provide them with an opinion concerning the legislation pertaining to the functioning of the Constitutional Court and the Supreme Court.

The Commissioner is seriously concerned by the very slow pace of execution by Albania of the judgments of the European Court for Human Rights ("the Court"), notably those relating to the non-enforcement of domestic court and administrative decisions, including the *Manushaqe Puto* pilot judgment. He underlines that it is of the utmost importance for the rule of law in Albania that all judgments delivered by the Court be promptly, fully and effectively implemented. As regards the persistent problem of excessive length of judicial proceedings, the authorities are urged to take all necessary measures to effectively address the outstanding issues in this context, as well as to create an effective domestic remedy, in line with the Court's case-law. The Commissioner remains concerned about the shortcomings in the implementation of the legal aid legislation hindering effective access to justice especially by vulnerable social groups. He calls on the authorities to address all outstanding issues in this regard in close co-operation with expert NGOs involved in this process. The authorities are also called on to step up their efforts to effectively address the issue of excessive court fees. To this end, the district and appeal judges need to be provided with clear guidance concerning the implementation of the 2013 Constitutional Court decision relating to this subject-matter.

II. The role of law enforcement authorities in the protection of human rights

The Commissioner is very concerned at the long-standing problems of ill-treatment and of impunity for serious human rights violations committed by law enforcement officers, including those relating to the violent events of 21 January 2011 in Tirana. The authorities are urged to take all necessary measures to ensure that all allegations of unlawful acts, including ill-treatment, by law enforcement officers committed during and after the events of 21 January 2011 are promptly and effectively investigated

and that those responsible are brought to justice. There is also a need to impose adequate, dissuasive penalties on any law enforcement official involved in serious human rights violations, in line with the relevant [2011 Guidelines](#) of the Council of Europe Committee of Ministers. To this end, systematic training should be used to raise awareness of this among prosecutors and judges. Albania can usefully draw on the Council of Europe's expertise in this domain.

The Commissioner is worried by reports indicating that access by detainees, including juveniles, to a lawyer and a medical doctor has been hampered or denied. The Commissioner calls on the authorities to give effect to all relevant recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and urges them to ensure that psychologists are always present during criminal proceedings involving juveniles. The excessive resort to and length of remand in custody, contrary to the standards contained in the Council of Europe Committee of Ministers' [Recommendation Rec\(2006\)13](#) is also of concern to the Commissioner. The Albanian authorities are urged to ensure that remand in custody is used only as a last resort, notably as concerns juveniles. Additionally, judges and prosecutors should be strongly encouraged to apply alternatives to detention and receive appropriate training, having regard to the Council of Europe standards and the Court's case-law. The authorities are invited to provide their full support to the National Preventive Mechanism in line with the standards contained in the Optional Protocol to the Convention against Torture (OPCAT). Lastly, the Commissioner calls on Albania to consider establishing an independent complaints mechanism covering the action of all law enforcement authorities.

The report contains the Commissioner's conclusions and recommendations addressed to the Albanian authorities and is published on the Commissioner's website along with the authorities' comments.

Introduction

1. The present report follows a visit to Tirana, Albania, by the Council of Europe Commissioner for Human Rights ("the Commissioner") from 23 to 27 September 2013.¹ The visit focused on the administration of justice and the protection of human rights in the context of the work of law enforcement authorities. This visit also gave the Commissioner an opportunity to take stock of the developments following his predecessor's 2011 special report relating to the events of 21 January 2011 in Tirana and his own letter addressed to the Ministry of Justice of Albania in 2012 concerning certain aspects of the human right of access to justice.
2. During his visit the Commissioner held discussions with the Albanian authorities, including the Deputy Prime Minister, Mr Niko Peleshi, the Minister of European Integration, Ms Klajda Gjoshaj, the Minister of the Interior, Mr Saimir Tahiri, the Minister of Justice, Mr Nasip Naço, the General State Advocate, Ms Ledina Mandia, the President of the Constitutional Court, Mr Bashkim Dedja, the Deputy Chairman of the High Council of Justice, Mr Elvis Çefa, the Prosecutor General, Mr Adriatik Llalla and the Director of the School of Magistrates, Mr Neshat Fana. In addition, the Commissioner met with the Ombudsman, Mr Igli Totozani, and the Commissioner for the Protection from Discrimination, Ms Irma Baraku.
3. The Commissioner also met with a large number of representatives of civil society organisations active in the field of human rights. In the context of his visit, the Commissioner launched, in co-operation with the Albanian Ombudsman, the Albanian language version of the [2009 Commissioner's Opinion](#) concerning independent and effective determination of complaints against the police. He also had an interesting exchange of views with the academic staff and students of the Law Faculty of Tirana University on human rights challenges in Europe and mechanisms to address them.
4. The Commissioner wishes to thank sincerely the Albanian authorities in Strasbourg and in Tirana for their assistance in organising his visit and facilitating its independent and smooth execution. He also extends his thanks to all his interlocutors for their willingness to share with him their knowledge and views.

¹ During his visit the Commissioner was accompanied by the Deputy to the Director of his Office, Mr Nikolaos Sitaropoulos and his Adviser, Ms Eriha Bičakčić.

5. The Commissioner notes that long-standing political polarisation in Albania has impacted negatively on all realms of political and social life, and has led to the marginalisation of important issues pertaining to the rule of law and human rights protection. There are a number of systemic dysfunctions in the domestic justice and law enforcement systems adversely affecting the enjoyment of human rights and fundamental freedoms in Albania, as well as the public perception of the effectiveness, independence, and impartiality of these systems.
6. The Commissioner welcomes the new government's commitment to introducing and implementing the necessary measures to strengthen the rule of law in Albania. He underlines that this endeavour will require political determination, strenuous efforts and close co-operation between all relevant national and international actors. In this context, the Commissioner stresses the important role played by the Ombudsman and the Commissioner for the Protection from Discrimination. He calls on the Albanian authorities to do their utmost in order to reinforce the independence, efficiency and effectiveness of these national human rights structures whose complementary work so far has been highly valued. In particular, the Commissioner considers that it would be highly beneficial for the effective protection of human rights in Albania if the competencies of each institution as concerns the implementation of the anti-discrimination legislation were further clarified.
7. The Commissioner welcomes the authorities' interest in pursuing systematic work on the protection of human rights, including the development of a national human rights action plan. The [Commissioner's 2009 Recommendation](#) on systematic work for implementing human rights at the national level provides useful guidance in this regard.
8. In this context, it is imperative to prioritise and effectively tackle the long-standing, systemic shortcomings of the justice and law-enforcement systems in Albania. The Commissioner therefore wishes to continue his constructive dialogue with the Albanian authorities on these issues. He trusts that this dialogue will be facilitated by the present report, which consists of the following sections: major issues pertaining to the administration of justice (section I); and the role of law enforcement authorities in the protection of human rights (section II). Each section of the report ends with the Commissioner's conclusions and recommendations addressed to the Albanian authorities.

I. Major issues pertaining to the administration of justice

1. General context

9. The report following the former Commissioner's visit to Albania in November 2007 underlined that while Albania had undertaken serious efforts to reform its justice system, "the judicial reform process is not completed and must be further pursued with determination, the emphasis being on the effective implementation of fair trial principles in every day practice of both law enforcement and judiciary (including prosecutorial agencies)".
10. The Commissioner notes that the politically polarised climate in Albania in which the judiciary has been operating in recent years has had a negative impact on the functioning of the justice system, and thus on the rule of law itself. There are a number of structural problems in the domestic justice system yet to be effectively addressed, as well as shortcomings in the implementation of the existing legislation, notably relating to access to legal aid.
11. The 2012 evaluation report of the European Commission for the Efficiency of Justice (CEPEJ) revealed that the public budget allocated to courts and public prosecution in Albania is one of the lowest among the Council of Europe member states.² In fact, Albanian courts and prosecution are allocated €6.1 per capita, whereas the Council of Europe median is €42 per capita. It is to be noted that in 2013 the budget for the overall justice sector was slightly higher

² See European Commission for the Efficiency of Justice (CEPEJ) 2012 [evaluation report](#), page 48.

than in 2012³, amounting to €77 million, which represents 0.8% of the GDP and 2.6% of the state budget.

12. The National Strategy for Development and Integration 2007-2013, a core document concerning the prospects of Albania for European integration, stressed the government's intention to reform the judiciary and its administration according to European standards. During his visit, the Commissioner was informed by the Minister of European Integration, Ms Klajda Gjosha, about the authorities' plan to adopt a new national strategy 2014-2020 which will also encompass reforms in the judicial field.
13. Various strategic documents and pieces of legislation concerning the justice system have been adopted in recent years, notably in the context of the implementation of obligations relating to Albania's candidacy to the European Union. The most important development was the adoption in 2011, by the Council of Ministers of Albania, of a comprehensive Justice Reform Strategy 2011-2013 and the accompanying action plan. A set of laws aimed at the improvement of the efficiency of the judiciary was adopted in 2012. In 2013 a new Law on the Supreme Court providing for, *inter alia*, stricter conditions and criteria for the selection of judges was adopted.
14. While noting these measures undertaken by the authorities with a view to reforming the justice system, the Commissioner considers that further efforts are necessary in order to bring the domestic justice system fully in line with Council of Europe standards. Among the issues that remain to be effectively tackled is the fight against corruption; efficiency of the judiciary, including the problem of backlogs and excessive length of proceedings; strengthening of independence and impartiality of the judiciary; and establishing an effective legal aid system that would make access to justice possible for everyone.
15. The Commissioner notes that the Council of Europe has an important role to play in assisting Albania in endorsing and implementing substantial legislative, institutional and practical reforms in this field. This assistance has already been provided in different ways, including by the implementation of various co-operation projects. The implementation of one such joint project of the Council of Europe and the European Union will be launched in the coming months. This project aims to increase the efficiency of the judiciary, improve the organisation and professionalism of court staff and the quality of the justice system. The project will be pursued through the application of specific tools and a methodology developed by CEPEJ, as well as capacity-building of key players in the field of the judiciary and court staff.
16. In his discussion with the Albanian authorities, the Commissioner encouraged them to seek the Venice Commission's opinion on various laws pertaining to the judiciary. Following his visit, the Commissioner has noted with satisfaction that the authorities submitted a request to the Venice Commission to be provided with an opinion on the laws pertaining to the functioning of the Constitutional Court and the Supreme Court.

2. Issues pertaining to corruption in the judiciary

17. The Commissioner recalls the Council of Europe Committee of Ministers' [Resolution \(97\) 24](#) on the twenty guiding principles for the fight against corruption, which underlines that corruption represents a serious threat to the basic principles and values of the Council of Europe, undermines the confidence of citizens in democracy, erodes the rule of law, constitutes a denial of human rights and hinders social and economic development.
18. According to the 2012 Transparency International *Corruption Perception Index*, Albania ranks among the ten most corrupt countries in Europe. The problem of a high level of corruption in the judiciary was noted in the 2011 Justice Reform Strategy. The Commissioner notes with concern that a perception of high level of corruption in the justice system by the public seriously impedes its proper functioning and undermines public trust in justice and the rule of law.

³ In 2012 the overall budget for the justice system amounted to €69.6 million, which represented 0.71% of the GDP.

19. Corruption prevention within the judiciary has not yet been subject to assessment by the Council of Europe's Group of States against Corruption (GRECO). This will be done in the context of GRECO's forthcoming Fourth Round Evaluation Report on Albania, focusing on the judiciary and parliamentarians. The Commissioner considers this evaluation highly important, and invites the authorities to fully co-operate with GRECO, including by providing thorough and accurate information concerning the subject matters of their report.
20. In its 2013 progress report on Albania, the European Commission (EC) noted that corruption in the judiciary remains a particularly serious problem. It is also noted that state institutions dealing with the fight against corruption remain vulnerable to political pressure and influence. The EC noted that risks of corruption and undue influence over the transfer and promotion of judges have not been addressed sufficiently.⁴
21. The high level of corruption within the judiciary was also noted by the UN Human Rights Committee (UN HRC) in its 2013 Concluding Observations on Albania.⁵ UN HRC called on the authorities to combat corruption rigorously, including by instituting procedures for vetting corrupt judges by an independent body and by taking appropriate sanctions against them. UN HRC noted that a serious impediment to the effective prosecution of corruption cases was the excessively wide scope of criminal immunity of state officials, including members of the judiciary. This system of immunities prohibited prosecutors from investigating or prosecuting corruption allegations until they made a public request to the High Council of Justice.
22. Against this background, the Commissioner welcomes the enactment in September 2012, by the Albanian Parliament, of amendments to the Constitution of Albania, limiting the broad immunity enjoyed by members of the judiciary. During his visit the Commissioner was informed by various interlocutors that these amendments had yielded some positive results. However, the real, long-term impact of this measure is yet to be assessed.
23. Other earlier steps taken by the government to fight corruption include the adoption in 2008 by the government of a Strategy for the Prevention and Fight against Corruption and for Transparent Governance 2008-2013 and an accompanying action plan. The Commissioner was also informed about the authorities' plan to prepare a special anti-corruption strategy targeting the judiciary.
24. It is also noted that in December 2012 the Council of Europe completed the implementation of the Project against Corruption in Albania ([PACA](#)), which was aimed at assisting the authorities in implementing the anti-corruption strategy, the accompanying action plan and the drafting of relevant legislation in this field. It also had a component focusing on capacity building, education and awareness-raising in this field.
25. It has been brought to the Commissioner's attention that the low level of judges' salaries is relevant when discussing the issue of corruption in the judiciary. Albanian judges receive some of the lowest salaries in Europe. According to the 2010 data contained in the CEPEJ evaluation report, while an Albanian judge is paid a gross annual salary of €7 350 at the beginning of their career and €14 700 at the end of their career, the Council of Europe median is €32 704 and €57 909 respectively.⁶ The Commissioner notes that even if the recent increase in judges' salaries (around 7% for appeal court judges and 20% for first-instance court judges) is taken into account, this difference does not change significantly.
26. While noting that Albanian judges' gross salary ratio is higher than the average national one (1.9, while the Council of Europe median is 2.1),⁷ the Commissioner draws the authorities' attention to the fact that some countries in transition⁷ have chosen to make this difference much higher in order to fight corruption within the judiciary. In this regard, the Commissioner recalls

⁴ See European Commission (EC) "2013 Progress Report on Albania", p. 41.

⁵ UN Human Rights Committee (UN HRC), "Concluding Observations on Albania", July 2013, p. 5.

⁶ See CEPEJ 2012 [evaluation report](#), p. 261.

⁷ Idem. See, for example, the data on Bosnia and Herzegovina, Bulgaria, Georgia, and Romania indicating that the judges' gross salary ratio is significantly higher than the average national one and the Council of Europe median, ranging from 3.1 (Bosnia and Herzegovina) to 4.8 (Romania).

the Council of Europe Committee of Ministers' [Recommendation CM/Rec\(2010\)12](#) on judges' independence, efficiency and responsibilities, which provides that the remuneration of judges should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions.

3. Issues relating to the independence and impartiality of the judiciary

27. Independence and impartiality are two fundamental, constituent parts of justice. In accordance with the Court's case-law, in order to establish whether a tribunal can be considered independent, for the purposes of Article 6, paragraph 1 of the ECHR, regard must be had, *inter alia*, to the manner of appointment of its members and their terms of office, the existence of safeguards against outside pressures and the question of whether it presents an appearance of independence, given the confidence which the courts in a democratic society must inspire in the public.

a. The role of the High Council of Justice

28. The principle of independence of the judiciary is enshrined in the Constitution of Albania and the 1998 Law "on the Organisation of Justice" in Albania. The High Council of Justice (HCJ) is the main institution tasked with ensuring the integrity of the Albanian judiciary. It takes decisions concerning careers, including appointments, promotions and transfers, and carries out disciplinary proceedings against judges of the district and appeal courts. The HCJ comprises 15 members, namely the President of Albania, the President of the Supreme Court, the Minister of Justice, three members elected by the parliament, and nine judges of all levels elected by the National Judicial Conference. Article 147 of the Albanian Constitution does not specify if the election of the HCJ members by the parliament is carried out by a simple majority vote, however this has been the practice so far.

29. The Commissioner has noted reports indicating that the process of the appointment of judges is not transparent and the reasoning behind appointment decisions lacks clarity. A need for de-politicisation of the appointments of judges, notably of the Supreme Court, has been noted in several consecutive progress reports on Albania by the EC and various experts. The evaluation of judges carried out by the HCJ has been criticised as not being based on objective criteria and merits. However, in 2013 the EC noted that in the evaluation of judges there is an overall trend to give increased weight to the applicant's merits and other objective criteria.⁸

30. In this context, the Commissioner recalls the Council of Europe Committee of Ministers' Recommendation No. [CM/Rec\(2010\)12](#) on judges' independence, efficiency and responsibilities, which provides that all decisions concerning the careers of judges should be based on objective criteria pre-established by law or by the competent authorities, and the selection and career of judges should be based on merit, having regard to their qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.

31. According to the authorities the current number of judges in Albania is 346, while the total number of judges of the district and appeal courts set by the relevant decree of the President of Albania is 366. 276 judges are currently subject to the on-going general evaluation of judges which covers the judges' performance during the period 2005-2006. This smaller number of judges subject to evaluation is due to various factors, including retirements and withdrawals from service. As of October 2013, 193 out of 276 judges had been evaluated. In the context of this evaluation, no judge was evaluated as 'incapable',⁹ while three judges were evaluated as 'acceptable' and have appealed the evaluations in court. Several qualitative and quantitative criteria are being used in this evaluation, including: the assessed judges' caseload, the quality of judgments, the outcome of the appeal proceedings relating to the judgments delivered by the judges concerned, training attended and appraisals by the president of the court. A judge who is

⁸ See EC "2013 Progress Report on Albania", p. 38.

⁹ When a judge is evaluated as 'incapable' the HJC initiates a dismissal procedure, while an evaluation as 'acceptable' indicates that re-evaluation of the judge is to be carried out within a year. The other two possible evaluations are 'very good' and 'good'.

dismissed after having been evaluated as 'incapable' can appeal the decision to the Supreme Court, and eventually submit a complaint to the Constitutional Court in case of an alleged violation of the right to a fair trial.

32. In his discussion with the Albanian authorities, the Commissioner expressed his concern about the limited temporal scope of the on-going evaluation, having noted the authorities' information that a number of judges have retired or left the judiciary since 2005. According to the authorities, the evaluation of a judge can only be completed once the judgments delivered by the judge during the concerned period of evaluation are scrutinised by higher courts, given that one of the criteria used is the outcome of the appeal proceedings. The Commissioner would like to emphasise that in order to enhance judges' accountability and independence, as well as to boost public trust in the judiciary, the authorities need to reflect on and adopt an efficient and effective system of judges' performance evaluation. He is seriously concerned that the ongoing evaluation, which is currently limited to the period 2005-2006, may hardly be described as efficient and effective. He encourages a rapid conclusion of the evaluation of this time period, so that the more urgent task of evaluating more recent performance can begin. In order to ameliorate the evaluation system, the authorities may usefully draw upon relevant expertise available in the Council of Europe.
33. The Commissioner notes with concern the longstanding issue of overlapping inspections by the HCJ and the Ministry of Justice, due to the unclear division of competencies between these two institutions. In 2012 these two institutions signed a memorandum of co-operation to clarify some aspects of their overlapping inspections, and in October 2012 a manual on inspections was agreed upon in order to ensure a co-ordinated approach to inspections. While the two inspectorates are authorised to inspect and supervise judges, the Minister of Justice has the sole responsibility of initiating disciplinary proceedings against judges. Moreover, as a member of the HCJ, the Minister of Justice participates in disciplinary proceedings and proposes disciplinary sanctions. However, he does not participate in the voting on a disciplinary sanction.
34. The Commissioner notes that the Venice Commission examined the issue of the role of the Albanian Minister of Justice in the HCJ in its 1998 Opinion.¹⁰ The Venice Commission stressed that "the nomination of judges and prosecutors has been exclusively entrusted to the High Council of Justice, thereby removing these decisions from undue political influence. However, it is advisable that the Minister of Justice should not be involved in decisions concerning the transfer of judges and disciplinary measures against judges, as this could lead to inappropriate interference by the Government". As a general principle, the Venice Commission¹¹ has stated that a judicial council should have decisive influence on the appointment and promotion of judges and on disciplinary measures against them.
35. As regards the composition of the HCJ, the Commissioner recalls that there is no standard model that a democratic state is bound to follow in setting up its High Judicial Council so long as the function of such a Council falls within the aim of ensuring the proper functioning of an independent judiciary.¹² The Venice Commission has stated that a substantial part or the majority of members of the HCJ should be elected by the judiciary itself, while other members should be elected by the parliament, from among persons with appropriate legal qualifications, taking into account possible conflicts of interest. It also stressed that although the presence of members of the executive power in the judicial councils might raise confidence-related concerns, such a practice is quite common.
36. In this regard, the Commissioner recalls that the Venice Commission is strongly in favour of the de-politicisation of judicial councils by providing for a qualified majority for the election of its parliamentary component. "This should ensure that a governmental majority cannot fill vacant posts with its own followers. A compromise has to be sought with the opposition, which is more likely to bring about a balanced and professional composition".¹³

¹⁰ See Venice Commission, "Report on Recent Amendments to the Law on major constitutional provisions of the Republic of Albania", [CDL-INF \(98\) 9](#), paragraph 16.

¹¹ See Venice Commission, "Judicial Appointments", [CDL-AD\(2007\)028](#), paragraph 25.

¹² *Ibid.*, pp. 6-7.

¹³ *Ibid.*, p. 6, paragraph 32

b. Appointment of Supreme Court judges

37. Selecting the appropriate system for judicial appointments is one of the primary challenges faced by states in transition, where concerns related to the independence and impartiality of the judiciary often persist. Political involvement in the judges' appointment procedure endangers the neutrality and effectiveness of the work of the judiciary.¹⁴
38. The Commissioner has noted with concern the reported politicisation of the appointment of the Supreme Court judges in the context of the politically polarised climate in Albania. According to Article 136 of the Albanian Constitution, Supreme Court judges are appointed for a nine-year term by the President of the Republic with the consent of the parliament. The Venice Commission has stressed that in a direct appointment system where judges are appointed by the head of state, what matters most is the extent to which the head of state is free in deciding on the appointment. It also stated that it should be ensured that the main role in the process is given to an independent body – the national judicial council. “The proposals from this council may be rejected only exceptionally, and the President would not be allowed to appoint a candidate not included on the list submitted by it”. The Venice Commission has also concluded that the appointment of ordinary judges is not an appropriate subject for a parliamentary vote, because the danger that political considerations may prevail over the objective merits of a candidate cannot be excluded.¹⁵

c. Appointment of the General Prosecutor

39. The General Prosecutor of Albania is also appointed by the President of the Republic with the consent of the parliament for a five-year term, while other prosecutors are appointed by the President of the Republic with the consent of the General Prosecutor. The Commissioner recalls the Venice Commission's position that the manner in which the Prosecutor General is appointed has a direct impact on the actual functioning and effectiveness of the prosecutor's office.¹⁶
40. The Commissioner notes that a persistent political polarisation in Albania has had a negative impact on the General Prosecutor's work in the recent past, not least in the context of the investigation of the 21 January 2011 events in Tirana.¹⁷ While this polarisation may be less evident in the current political context in Albania, steps need to be taken to ensure that the General Prosecutor is able to perform his professional duties and responsibilities without unjustified interference, in line with the Council of Europe standards.¹⁸ In this regard, the Commissioner draws the authorities' attention to the Venice Commission's recommendation which provides that the use of a qualified majority for the parliament's consent to the appointment of a prosecutor general could be seen as a mechanism to promote a broad consensus on such appointments and avoid the danger of the politicisation of the appointment.¹⁹

d. Measures aiming to ensure the impartiality of judges

41. As concerns measures to ensure the impartiality of judges, in 2012 an Integrated Case Management and Information System (ICMIS) was introduced in the Albanian courts. This system ensures random allocation of cases in criminal and civil matters. The system aims to enable courts to properly manage cases, with internet access for all judges, and provides online access to leading court rulings, primarily the decisions of the Supreme Court. In 2012 the EC

¹⁴ See Venice Commission, “Judicial Appointments”, [CDL-AD\(2007\)028](#), paragraph 2.

¹⁵ *Ibid.*, paragraph 47.

¹⁶ See Venice Commission “Report on European Standards as regards the independence of the judicial system”, Part II – The Prosecution Service, paragraph 34, [CDL-AD\(2010\)040](#).

¹⁷ See, Special report following the visit to Albania to assess the human rights aspects of the events of 21 January 2011 in Tirana by the Council of Europe Commissioner for Human Rights, paragraphs 22 and 31.

¹⁸ See Council of Europe Committee of Ministers' [Recomendation Rec\(2000\)19](#) on the role of public prosecution in the criminal justice system.

¹⁹ See the above mentioned report by the Venice Commission concerning the prosecution service, p. 16.

noted that further efforts are needed in order to have a fully uniform and harmonised integrated case management system functioning in all courts.

42. As regards training of judges and prosecutors, this is provided by the School of Magistrates, a public institution which provides the initial vocational education for candidates for posts of judges and prosecutors, and the continuous vocational and professional education of judges and prosecutors at all levels. The curriculum of this school includes education and training on the national legislation and case-law, as well as the case-law of the Court. The School of Magistrates is an active member of the Council of Europe Human Rights Education for Legal Professionals network ([HELP](#)). The Commissioner has also noted with interest that the aforementioned joint project of the Council of Europe and the European Union on the efficiency of justice in Albania contains a component relating to training for practitioners and trainers of the School of Magistrates²⁰ on the CEPEJ tools concerning the efficiency and quality of justice.
43. The Director of the School of Magistrates informed the Commissioner that certain steps have been taken in order to further improve the quality of lectures; however, the School is facing serious budgetary cuts. The Commissioner calls on the authorities to provide the necessary financial means to ensure the efficient and effective functioning of the School. In this regard, the expertise and knowledge of the Council of Europe experts and members of its monitoring bodies could be used in order to enhance the quality of lectures provided by the School of Magistrates.

4. Execution by Albania of the European Court of Human Rights' judgments

44. The European Court of Human Rights ("the Court") has noted in a number of its judgments that the primary responsibility for implementing and enforcing the human rights and fundamental freedoms guaranteed by the Convention lies with the national authorities. The ECHR system is thus subsidiary to national systems which bear the responsibility of safeguarding human rights and fundamental freedoms in the first place.
45. The Commissioner is seriously concerned by the very slow pace of execution by Albania of the Court's judgments. As of September 2013, the Council of Europe Committee of Ministers ("the CM") closed the supervision of execution of only two out of the 32 judgments against Albania delivered by the Court. In 19 of the 30 judgments whose execution is currently pending the 'enhanced procedure' is applied by the CM. In approximately one half of these judgments no substantial steps have been taken by the authorities to execute the judgments for more than three years, such as the submission of an action plan concerning the execution of the judgment.
46. As of September 2013, there were 413 applications against Albania pending before the Court. Even though the number of pending applications is not significant as compared to other member states of the Council of Europe, the lack of prompt execution of the Court's judgments could potentially generate a larger number of applications in Strasbourg. In its pilot judgment concerning the case of *Manushaqe Puto and others* (see below), the Court noted that "having regard to the number of similar cases pending before the Court and statistics provided by the Government, the Court is seriously concerned that the number of well-founded applications registered could increase and, therefore, represent a critical threat to the future effectiveness of the Convention machinery".
47. Some steps have been taken in order to ensure that the principle of subsidiarity is effectively applied in Albania. Albania was a beneficiary country of the Council of Europe Human Rights Trust Fund project aimed at supporting its efforts to design and adopt effective rules and procedures at the national level for better enforcement of domestic court judgments, which ended in 2012. Albania is currently a beneficiary country of two other Council of Europe projects aimed at fostering the application of the Court's case-law at national level: one concerning the translation and dissemination of the Court's case-law in Albanian and another concerning the setting up of a training institute within the Court.

²⁰ Following up on a previous project with the Council of Europe "Support to the Sustainability of the School of Magistrates" and EURALIUS assistance.

48. Some of the Commissioner's interlocutors from the judiciary and civil society indicated that there was an increasing level of knowledge of the Court's case-law among judges, which is also reflected in the latest rulings delivered by them. This positive trend should be further supported, in particular in those areas where there is a need to enhance the application of the principles established by the Court (for instance, in respect of the application of alternative measures to pre-trial detention).
49. In June 2013 the Council of Europe's Department for the Execution of Judgments of the European Court of Human Rights organised a seminar with the judges of the Supreme Court of Albania, aimed at improving their understanding and knowledge of the Convention system and of their role in this system. This seminar proved a very good avenue for an exchange of views between the Council of Europe and Albanian judges.²¹ The Commissioner supports these initiatives that aim to assist Albania in implementing its obligations stemming from its membership in the Council of Europe.

5. The cases concerning non-enforcement of domestic decisions and property confiscation during the communist regime

50. The Commissioner recalls that the non-enforcement by national authorities of court decisions constitutes a breach of the right to a fair trial enshrined in Article 6 of the European Convention on Human Rights. In its judgment in the case of *Hornsby v. Greece*, the Court affirmed that the "right to a court [...] would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party".
51. The Commissioner notes with concern the existence in the Albanian justice system of a long-standing, structural problem concerning failure to enforce final domestic court and administrative decisions relating to compensation or the restitution of property confiscated during the communist regime. This problem has been identified in a number of the Court's judgments, such as the one in the case of *Beshiri*²² in which the Court found a violation of Article 1 of Protocol No 1 to the ECHR, due to the authorities' failure to enforce judgments awarding the applicants compensation for their father's property which was nationalised during the communist regime. In this judgment the Court reiterated that in the execution of judgments in which the state was ordered to make a payment, a person who had obtained a judgment against the state should not be required to bring enforcement proceedings in order to recover the sum due.
52. Due to the authorities' failure to execute a number of judgments concerning this subject matter, on 31 July 2012 the Court rendered a pilot judgment in the case of *Manushaqe Puto and others*. The Court noted that it had to apply the pilot-judgment procedure in this case in view of the large number of problems besetting the compensation mechanism, which persist even after the adoption of previous judgments concerning this issue. The Court scrutinised all the measures that the Albanian authorities had undertaken in order to execute these judgments and listed the measures to be taken in this context. Having regard to the considerable burden of financial compensation on the state budget, the Court encouraged the authorities to start making use of alternative forms of "compensation" provided for by relevant legislation,²³ which would eventually ease pressure on the budget, and/or to introduce other methods of compensation.
53. The Court also stressed the importance of setting realistic, statutory and binding time-limits in respect of every step of the "compensation" process and called for the provision of sufficient

²¹ Information received from the Council of Europe Department for the Execution of Judgments of the European Court of Human Rights.

²² Judgment of 22 August 2006.

²³ The 2004 Property Law provides for the restitution of urban, immovable property, which had been expropriated, nationalised or confiscated after 29 November 1944. It provides for six forms of "compensation" if the original property cannot be restored: (a) property of the same kind; (b) public property located in tourist areas; (c) property of any other kind; (d) shares in State-owned companies; (e) the value of a State-owned property in the course of privatisation, and (f) a sum of money corresponding to the value attributed to the property at the time of the decision

human and material resources and better co-ordination amongst different state institutions. The Court requested the setting up of an effective compensation mechanism within 18 months, namely by 17 June 2014.

54. In its interim resolution CM/ResDH(2013)115, adopted in June 2013, the CM called on the Albanian authorities to give the highest priority to the preparation of an action plan capable of establishing, within the deadline set by the Court, an effective compensation mechanism, taking account of the measures already identified. The adoption of this interim resolution followed the Albanian authorities' failure to fulfil their obligation of sending the consolidated and updated action plan concerning the execution of the relevant judgments. The CM concluded that the finalisation of the land valuation map is the only measure that has been adopted by the authorities. As of October 2013 the CM had not received any precise information on the number of final administrative and court decisions to execute, the cost of the execution of these decisions and the resources required. Also, no action plan had been submitted to the CM.
55. The Commissioner stresses that the non-execution of domestic court and administrative decisions is a broader problem which is not limited to the cases of compensation for nationalised property. Albania has a two-track system of enforcing domestic court and administrative decisions, a state and a private one, functioning in parallel. The private bailiff system was introduced in 2008 in order to relieve the state bailiff service of its workload, and achieve better efficiency in cases where the state is a debtor. This system became operational in 2010. As of August 2013 there were 114 private bailiffs licenced by the Ministry of Justice. The Ministry of Justice oversees the work of private bailiffs.
56. Reportedly, the root causes of the problem of non-enforcement of domestic court decisions are excessive procedural delays in enforcement proceedings, due to legal provisions which give the opportunity to debtors to delay execution by lodging various objections and appeals. Moreover, judges very often allow these procedural objections and requests for appeals, even if they are frivolous. According to legal experts, there is also a problem in the reasoning of judgments which often do not clearly identify the subject of the enforcement or a debtor, notably as concerns property cases due to lack of complete land registers.
57. The Commissioner underlines that it is of the utmost importance for the rule of law in Albania that the Court's judgments concerning non-enforcement of domestic court and administrative decisions be promptly and effectively implemented. He was pleased to note that there was an acute awareness of the importance of this issue on the side of the Ministry of Justice, which has led to the establishment of a working group in this Ministry, tasked with identifying all non-executed domestic court and administrative decisions where the state is a debtor. Furthermore, the Commissioner was informed of the authorities' intention to prepare a draft law on the automatic execution of the Court's judgments. The Commissioner looks forward to receiving more information about these two initiatives.

6. Excessive length of judicial proceedings

58. Article 6 of the ECHR requires proceedings to be conducted "within a reasonable time". In requiring cases to be heard within a "reasonable time", the Convention underlines the importance of administering justice without delays which may jeopardise its effectiveness and credibility. Excessive delays in the administration of justice constitute an important danger, in particular for the respect of the rule of law.²⁴
59. The problem of excessive length of judicial proceedings, noted also in the 2008 report following the former Commissioner's visit to Albania, persists. In his 2012 Annual Report,²⁵ the Albanian Ombudsman noted that out of 250 complaints he received concerning problems relating to the justice system, 90 related to excessive length of proceedings in domestic courts.

²⁴ See Council of Europe Committee of Ministers' [Recommendation CM/Rec \(2010\)3](#) to member states on effective remedies for excessive length of proceedings.

²⁵ See People's Advocate of Albania, 2012 Annual Report, p. 118.

60. There are currently about 50 cases against Albania pending before the Court concerning the excessive length of civil and criminal proceedings.
61. The problem of excessively lengthy proceedings seems to be linked to a wide range of interconnected factors, which include the courts' caseload and backlogs, as well as procedural and organisational aspects. As of January 2012, 27 623 cases were pending before district and appeal courts, while this number was 24 415 as of January 2011.²⁶ In 2012 the EC noted that the overall lack of a comprehensive legal framework on judicial administration in line with European standards has a negative impact on the efficiency of domestic courts. Furthermore, the lack of funds and understaffing were mentioned as factors contributing to heavy caseloads and backlogs in courts.
62. A 2012 OSCE report²⁷ listed several reasons for the problem of excessive length of judicial proceedings. The report indicated that there are serious procedural flaws in the summoning of parties; inadequate preparation of hearings, notably as concerns the collection of evidence; and no effective mechanism for the sanctioning of parties for unjustified absence. In this context, the OSCE noted that the current sanctioning mechanism appears to be vague and the available sanctions are too lenient. Moreover, judges do not seem to use the sanctions to the fullest extent possible.
63. In 2012 CEPEJ noted that Albania was among the countries that have not yet introduced a system of court case monitoring in the context of Article 6 of the ECHR, notably as concerns the excessive length of proceedings. CEPEJ encouraged Albania to introduce this mechanism, noting that such a mechanism in the statistical system is an essential tool for remedying the dysfunctions highlighted by the Court and preventing further violations of the ECHR.
64. The Commissioner notes that due to the lack of an effective system for tracking court cases, there are parallel civil proceedings concerning the same subject matter, a factor that compounds the problem of excessively lengthy proceedings. This problem has been identified by the Court in the case of *Gjonbocari and others*²⁸, concerning, *inter alia*, a violation of Article 6 of the ECHR due to the excessive length of civil proceedings concerning property matters. The Court considered that better management of the parallel, inter-related proceedings would certainly have contributed positively to the speedy clarification of the applicants' property title. Additionally, the Court concluded that the Albanian legal system did not provide for an effective domestic remedy in order to obtain redress for the excessive length of proceedings, including compensation.
65. As concerns the length of proceedings in criminal cases, according to CEPEJ, Albania is one of the countries where the volume of cases concerning serious criminal matters before first instance courts creates backlogs. The Commissioner is concerned that this may lead to the defendants remaining in pre-trial detention for long periods while waiting for their case to be tried.
66. The Albanian authorities have taken certain steps in order to address the problem of excessive length of proceedings. Reforms of the civil and criminal procedure codes aimed at eliminating backlogs and at preventing unreasonable delays are underway. Certain minor amendments to the civil procedure code were enacted in April 2013, some of which were aimed at reducing the length of proceedings. These amendments allow the courts to legally summon the parties by electronic means. While it is commendable that the Ministry of Justice proposed these amendments, concerns have been expressed by the OSCE that they only tackle some of the reasons for delays. According to the OSCE, other aspects of the problem of excessive length in civil court proceedings, including inefficient procedures for collecting evidence, remain unaddressed.

²⁶ See EC "2013 Progress Report on Albania", p. 39.

²⁷ See OSCE- Presence in Albania, "[Towards Justice](#) - analysis of the civil proceedings in the district courts", 2012.

²⁸ [Gjonbocari and others v. Albania](#), paragraph 66.

67. In 2012 the Albanian Parliament adopted the Law on Administrative Courts which aimed to help reduce court backlogs. The Law on Administrative Courts provides for first instance administrative courts to be set up at central and regional level, and for a court of appeal and a special chamber to be established in the High Court. Furthermore, a new law on the profession of lawyer, which was adopted in 2012, provides for an enhanced procedure for the investigation of cases of professional misconduct of lawyers whose unjustified absence from hearings appears to be a factor significantly contributing to excessively lengthy proceedings.
68. Against this background, the Commissioner considers that the implementation of the aforementioned joint project of the Council of Europe and the European Union will play an important role in improving the efficiency and effectiveness of the Albanian justice system. The Commissioner hopes that the implementation of this project will help the authorities make better use of the [CEPEJ SATURN Guidelines](#) for judicial time management, which contain specific recommendations for legislators and policy makers, courts, administrators, and judges. The Commissioner urges the Albanian authorities to ensure that reform efforts in the judicial sector are inspired by the principles contained in these guidelines.

Lack of an effective remedy for excessively lengthy judicial proceedings

69. The Commissioner recalls the Council of Europe Committee of Ministers' [Recommendation CM/Rec\(2010\)3](#) on effective remedies for excessive length of proceedings, which calls on member states to take all necessary steps to ensure that effective remedies before national authorities exist for all arguable claims of violation of the right to trial within a reasonable time. *Acceleratory remedies* respond to the obligation of ensuring that cases are processed by courts in a foreseeable and optimum manner, while *compensatory remedies* aim to fully redress the violation.
70. The Constitutional Court of Albania is competent to decide on individual applications in cases of alleged violations of the right to a fair trial and public hearing. However, if it finds a violation of the right to a fair trial within reasonable time, the Constitutional Court can only order the proceedings to be accelerated, whereas it does not have the competence to grant any kind of pecuniary compensation.
71. In the 2007 judgment concerning the case *Marini v. Albania*,²⁹ the Court found a violation of Article 13 of the ECHR due to lack of domestic remedy in length of proceedings cases. The Court held that, even assuming that the Constitutional Court could in theory offer adequate redress in respect of the excessive length complaints, the government failed to produce any case in which the Constitutional Court had ruled on a complaint about the length of proceedings.
72. The Commissioner was informed that a draft amendment to the Law on the Constitutional Court,³⁰ which provides for a possibility for the Constitutional Court to grant pecuniary compensation in length of proceedings cases, has been prepared by the Ministry of Justice. In this regard, it is recalled that according to the Venice Commission "while the payment of pecuniary compensation must be granted in cases where undue delays have occurred, pending the possibly necessary reforms and improvements of the judicial systems and practices, it should not be regarded or accepted as a form of fulfilment of the obligations stemming from Article 6 and from Article 13 of the ECHR".³¹ While the Commissioner encourages the authorities to adopt the aforementioned amendment in order to establish an effective domestic remedy for length of proceedings cases, he also urges the authorities to do their utmost in implementing the necessary reforms in the judicial sector in order to eliminate the structural, root causes of excessively lengthy proceedings.
73. Lastly, the Commissioner notes that the provision of pecuniary compensation for length of proceedings cases has to be based on the following major principles: compensation must be

²⁹ Judgment of 18 December 2007.

³⁰ Law on the organisation and functioning of the Constitutional Court of the Republic of Albania no. 8577 of 10 February 2000.

³¹ See Venice Commission, "Report on the effectiveness of national remedies in respect of excessive length of proceedings", p. 45 [CDL-AD\(2006\)036rev](#).

awarded in accordance with the Court's case-law on the matter; and it must be adequate and sufficient for the victim, taking into account the specific circumstances (the standard of living) in the respective state.³² The Venice Commission's [Report on the effectiveness of national remedies in respect of excessive length of proceedings](#) provides useful guidance in this context.

7. Major human rights issues relating to criminal justice

74. The Commissioner notes that several judgments against Albania delivered by the Court indicate certain problems relating to the unfairness of criminal proceedings. The Committee of Ministers is currently supervising, under the 'enhanced procedure', the execution of a group of five relevant judgments. In the lead case of *Caka*,³³ Albania has been found in violation of Article 6 of the ECHR due to the failure of a domestic court to secure the appearance at the applicant's trial of certain witnesses and to have due regard to the testimonies given by witnesses given in the applicant's favour. In the judgment concerning the case of *Laska and Lika*,³⁴ the Court found violations of Article 6 of the ECHR due to the domestic courts' failure to remedy irregularities which took place at the investigation stage of the applicants' case concerning the identification of suspects. In this case, the Court considered that a case retrial or reopening, if requested by the applicant, represents in principle an appropriate way of redressing these violations. The Court referred to the guidelines of the Committee of Ministers contained in its [Recommendation No. R \(2000\) 2](#) where it is noted that "the practice of the Committee of Ministers in supervising the execution of the Court's judgments shows that in exceptional circumstances the re-examination of a case or a reopening of proceedings has proved the most efficient, if not the only, means of achieving *restitutio in integrum*".
75. In three other judgments³⁵ the Court found violations of Article 6 of the ECHR due to the unfairness of criminal proceedings held *in absentia* and the denial of the applicants' right to defend themselves at a public hearing before the court of appeal and the Supreme Court. The Court noted that the respondent state's criminal legal system does not provide for the possibility of re-examining cases, including the reopening of domestic proceedings, in the event of the Court's finding of a serious violation of an applicant's right to a fair trial.
76. It is to be noted that in these cases (*Caka, Laska and Lika, and Berhani*), the Supreme Court decided to reopen the criminal proceedings following the Court's judgments, whereas such an option is not yet possible under the Criminal Procedure Code of Albania. In a decision concerning the execution of these judgments, adopted in March 2013, the Committee of Ministers reaffirmed that the reopened criminal proceedings against the applicants should be completed without further delay and should address so far as possible the shortcomings found by the Court in the original proceedings. The Committee of Ministers expressed its concern over the delays and uncertainties surrounding the reopening of proceedings in this group of cases, and urged the Albanian authorities to inform it promptly of any changes in the situation of the applicants. The Albanian authorities were encouraged to intensify their efforts aimed at finalising and adopting amendments to the Criminal Procedure Code, which would provide a possibility for the reopening of criminal proceedings in case of a violation of the right to a fair trial.

8. Certain major human rights issues concerning effective access to justice

a. Access to legal aid

77. The Commissioner recalls the Council of Europe Committee of Ministers' [Resolution \(78\)8](#) on legal aid and advice which provides that all the necessary steps should be taken 'with a view to eliminating economic obstacles to legal proceedings and that the existence of appropriate systems of legal aid will contribute to the achievement of this aim especially for those in an

³² Ibid., p. 41, paragraph 206.

³³ Judgment of 8 December 2009.

³⁴ Judgment of 20 April 2010.

³⁵ See *Berhani v. Albania*, judgment of 27 May 2010, *Cani v. Albania*, judgment of 6 March 2012, and *Shkalla v. Albania*, judgment of 19 May 2011.

economically weak position'. This principle has been corroborated by several other texts adopted by the Council of Europe Committee of Ministers.³⁶

78. The Law on Free Legal Aid, which provides for free legal aid in civil matters, was adopted in 2008. However, the free legal aid system became operational only in 2011, following the establishment in 2010 of the State Commission for Legal Aid ("State Commission"). A set of necessary by-laws was adopted by the Ministry of Justice in December 2011 and January 2012.
79. In the former Commissioner's 2008 report on Albania it was stated that 'despite the procedural laws guaranteeing access to justice for all in theory, the system of legal aid was not adequate in practice and individuals without financial resources face difficulties in accessing the court system'.³⁷ It was also noted that NGOs fill in the existing gaps by providing legal advice and financial support securing access to justice for the indigent.
80. In [his 2012 letter to the Ministry of Justice](#) concerning certain aspects of access to justice, including free legal aid, the Commissioner expressed his concern about some shortcomings in the free legal aid legislation and its implementation. He noted that the lack of public awareness of the availability of free legal aid appeared to be one of the reasons for the rather low number of applications for free legal aid. He also stressed that the procedure of applying for legal aid by those persons who are not social beneficiaries is cumbersome, as these persons have to submit a number of documents in support of their application. It also noted reports indicating that, due to the restrictive selection criteria, a limited number of lawyers had been designated.
81. The Commissioner was informed during his visit to Albania that the problems identified in his aforementioned letter remain. The lack of awareness about the State Commission and its work continues. The Commissioner was told that it is practically impossible for people outside Tirana to find information about legal aid, since leaflets containing information about legal aid are reportedly only available in the District Court of Tirana. It has been strongly suggested by expert interlocutors that, in order to increase transparency, the State Commission should create a web-page. Other awareness activities should be planned and implemented in order to reach out to people who are in need of legal aid, notably persons with disabilities, migrants and Roma.
82. To this end, the State Commission needs to create a system which would make it possible for individuals in need to seek and be provided with legal aid in a county or a local bar association. At present reportedly the only possibility for individuals to apply for legal aid is by visiting the State Commission's office which is located in the Ministry of Justice in Tirana. In this regard, it has been suggested that lawyers from districts other than Tirana should be contracted. It was also suggested that the scope of legal aid should be expanded to cover, where necessary, DNA testing as well as court expertise.
83. The Commissioner commends the work of the expert NGOs which play an important role in providing legal aid services to vulnerable groups and have been involved in the drafting of the legal aid legislation. One of those NGOs has organised training sessions for individuals focusing on self-representation in courts, notably relating to property cases. The Commissioner was informed that 300 cases have been handled through this kind of self-representation in courts. This methodology proved effective and inexpensive and the authorities may consider a possibility of transposing it to legal clinics which are or will be supported by the state.
84. The Commissioner has also noted with interest that the Ministry of Justice plans to establish in 2014 six legal clinics in the courts of appeal, tasked with providing legal aid. Furthermore, in January 2014, due to the plan to significantly decrease the number of public bailiff officers, some of the bailiff officers will be transferred to the State Commission for Legal Aid and the legal clinics. According to the Ministry of Justice, these plans will be reflected in the 2014 state budget.

³⁶ See e.g. Council of Europe Committee of Ministers' [Resolution \(76\) 5](#) on legal aid in civil, commercial and administrative matters and [Recommendation \(93\) 1](#) on effective access to the law and to justice for the very poor.

³⁷ See Report by the Council of Europe Commissioner for Human Rights following his visit to Albania, 18 June 2008, paragraph 23.

b. Excessive court fees in civil proceedings

85. The Commissioner addressed the issue of excessive court fees in civil proceedings in the aforementioned 2012 letter to the Minister of Justice. In this context, the Commissioner recalled the Council of Europe Committee of Ministers' [Recommendation R \(81\) 7](#) on measures facilitating access to justice, which provides that no sum of money should be required of a party on behalf of the state as a condition for commencing proceedings, should the sum of money be unreasonable having regard to the matters at issue. Moreover, the Court held in several cases that the excessive court fee and the refusal of domestic courts to grant exemptions were in violation of the applicants' right of access to a court.³⁸
86. The Civil Procedure Code provides that in order to initiate civil proceedings the plaintiff has to pay a court fee. The 2008 Law on National Taxes and the relevant by-law provide that the court fees for most civil disputes are 3% of the value of the claim and the amount has to be paid up front, while in enforcement proceedings the plaintiff is obliged to pay 3% of the value adjudicated by the court in order to have the court judgment in favour enforced. There is no court fee for labour disputes relating to reinstatement to the post previously held by the plaintiff.
87. In the aforementioned 2012 letter, the Commissioner expressed his concern about the current system of court fees, notably as concerns the obligation of payment up front. He also noted that courts did not have the discretion to grant an exemption or reduce these court fees. He expressed his concern that due to this system some persons had been prevented from pursuing their rights in civil proceedings due to economic difficulties.
88. In February 2013, the Constitutional Court delivered a decision concerning the request of two district courts in Albania (Tirana and Pogradec) to review the constitutionality of the 2008 Law on National Taxes and the relevant by-law. The two district courts³⁹ requested the Constitutional Court to establish that the Law was not compliant with the Constitution due to the obligation provided therein to pay the court fees up front and because the Law did not provide for a possibility to grant an exemption or reduction of court fees for persons with economic constraints. The Constitutional Court found that the Law was compatible with the Constitution and did not violate individuals' access to court. It noted, *inter alia*, that various provisions of the Civil Procedure Code provided a possibility for the judge to assess whether the plaintiff should be granted exemption from the payment of court fees if unable to pay the court fees.
89. The Commissioner has noted the Ombudsman's concerns that the aforementioned decision of the Constitutional Court did not provide clear indications as to what would be the legal basis for the exemption from the payment of the court fees, given that there is a clear legal obligation to pay the court fees up front and exemptions from the payment are exceptional. This concern was also expressed in the dissenting opinion of the Constitutional Court Judge Berberi who maintained, *inter alia*, that the current system leaves room for arbitrariness in the application of court fees. Moreover, in the aforementioned OSCE report⁴⁰ it was noted that "there is no possibility for the courts to reduce the court fee in special circumstances, except in those instances where the persons belong to a specific category exempted from taxes". The Commissioner regrets this lack of clarity on this important human rights issue and considers that judges of the district and appeal courts should be provided with clear guidance which would help them in implementing the Constitutional Court decision. This guidance could be developed by the Supreme Court in close consultation with the Constitutional Court.
90. The Commissioner was pleased to note that some of his concerns and recommendations contained in the aforementioned 2012 letter have been taken on board by the authorities. In May 2013 amendments to the Law on Legal Aid were enacted which task the State Commission with granting exemptions from the payment of court fees under certain conditions. They

³⁸ See, for example, [Kreuz v. Poland](#), judgment of 19 June 2001, paragraph 66.

³⁹ The Constitutional Court decided that the third applicant, the Centre for Legal and Civic Initiatives, a legal aid NGO, did not have standing in the proceedings concerned.

⁴⁰ See OSCE- Presence in Albania, "[Towards Justice](#) - analysis of the civil proceedings in the district courts", 2012, p. 100.

stipulate that beneficiaries of legal aid, when filing civil or administrative complaints with a court, may be exempted from court fees (and court expenses) if (a) they prove that they are beneficiaries of social protection programmes or meet the conditions to become beneficiaries; or (b) are victims of domestic violence or human trafficking offences. The request is examined by the State Commission for Legal Aid within ten days of submission. If the Commission does not decide on the request within ten days or refuses the request, the court may decide on the request for fee exemption at the preliminary hearing.

91. These amendments also provide that the State Commission may grant to individuals who are not beneficiaries of legal aid, but *de facto* cannot afford to pay court fees, the possibility to pay the fees at a later stage or by instalments.
92. The aforementioned amendments also foresee the adoption by the State Commission for Legal Aid detailed rules and criteria for exemption from court fees and expenses. The Commissioner has noted with concern that the State Commission has not yet adopted these by-laws.
93. Whilst he welcomes these last amendments which aim to improve access to justice by persons with economic constraints, the Commissioner is concerned that the amendments do not provide for exemption from court fees, but only for deferred payment, for persons who are not beneficiaries of legal aid but are *de facto* unable to pay court fees. This would mean, in practice, that some of the most vulnerable groups, notably Roma who due to lack of personal identity documents cannot benefit from legal aid, cannot be exempted from the payment of court fees. Therefore, for these people the problem of excessive court fees remains, although it is true that the deferred payment may alleviate it to some extent.
94. During his meeting with the Commissioner, the Minister of Justice stressed that the issue of excessive court fees is high on his agenda and steps would be taken to effectively address it, including by decreasing court fees. The Commissioner welcomes the Minister's determination to effectively tackle this serious issue and would appreciate receiving updated information on the measures envisaged or taken in this regard.

Conclusions and recommendations

95. The Commissioner underlines that a strong and well-functioning judicial system, fully integrating the protection of and respect for human rights, is an indispensable component of the rule of law, which in turn constitutes the basis of a genuine democracy. He welcomes the authorities' ongoing efforts to reform the justice sector, in particular by adopting a comprehensive justice reform strategy and an accompanying action plan.
96. The Commissioner remains concerned by the lack of effectiveness, so far, of the fight against corruption, notably in the judiciary. Whilst he welcomes the enactment in September 2012 of amendments to the Albanian constitution limiting the broad immunity enjoyed by members of the judiciary, the Commissioner urges the authorities to step up their efforts to ensure that all cases of corruption in the judiciary are effectively investigated and prosecuted.
97. The Commissioner encourages the authorities to address the issue of judges' salaries as a matter of priority, by ensuring that their level is commensurate with the dignity of their profession and burden of responsibilities, in line with the Committee of Ministers' [Recommendation No. CM/Rec\(2010\)12](#) on judges' independence, efficiency and responsibilities.
98. The Commissioner recalls that the independence and impartiality of judges, as well as the appearance of their independence and impartiality, are constituent elements of the rule of law. He considers that there is a need to further strengthen the independence of the High Council of Justice, in line with Council of Europe standards. In this context, the Commissioner calls on the authorities to adopt the necessary legislative measures which will provide for a qualified majority for the election by the parliament of High Council of Justice members.
99. The Commissioner calls on the authorities to ensure that the appointment, professional evaluation and transfer of judges are carried out in accordance with the Committee of Ministers' [Recommendation No. CM/Rec\(2010\)12](#) on judges' independence, efficiency and

responsibilities. The authorities are urged in particular to ensure that the selection and career of judges are always based on merit, having regard to qualifications, integrity, ability and efficiency.

100. The Commissioner stresses that the role of the Minister of Justice in disciplinary proceedings against judges raises serious concerns about the executive's interference or appearance of interference with judicial independence. The authorities are urged to take the necessary measures to ensure that the Minister of Justice is no longer involved in decisions concerning disciplinary measures against judges.
101. The Commissioner also notes with concern that the current system of appointment of the Supreme Court judges and the General Prosecutor raises a serious risk of improper political influence. He calls on the authorities to consider adopting the necessary constitutional amendments which would provide that the main role in the appointment of the Supreme Court judges is given to the High Council of Justice in line with the relevant positions of the Venice Commission. The authorities are further invited to adopt the necessary legislative measures which would provide for a qualified majority in the parliament's vote and consent concerning the appointment of the General Prosecutor by the President of the Republic.
102. Non-enforcement of domestic court and administrative decisions continues to be a very serious problem that hinders the efficiency of the judicial system and is a blow to the rule of law in Albania. A number of judgments delivered by the European Court of Human Rights against Albania found violations of the Convention due to non-enforcement of domestic court and administrative decisions, including the pilot judgment concerning the case of *Manushaqe Puto and others*. In this context, the Commissioner recalls the Council of Europe Committee of Ministers' [Recommendation Rec\(2003\)17](#) on enforcement, and [Recommendation CM/Rec\(2008\)2](#) on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights, and urges the authorities to immediately take all necessary measures that would ensure the effective implementation of domestic courts and administrative decisions.
103. The Commissioner is concerned about the persistent problem of excessive length of judicial proceedings. He urges the authorities to take all necessary measures, including legislative ones, to effectively address the outstanding issues in this context. The authorities are urged to create an effective domestic remedy drawing on the principles elaborated in the Venice Commission's [Report on the effectiveness of national remedies in respect of excessive length of proceedings](#).
104. The Commissioner urges the authorities to fully and promptly execute the judgments of the European Court of Human Rights concerning the *Caka group*. In this context, he calls on the authorities to adopt amendments to the Criminal Procedure Code which would provide for the possible reopening of criminal proceedings in cases of violation of the right to a fair trial, in line with the Committee of Ministers' [Recommendation No. R \(2000\) 2](#).
105. The Commissioner notes that the human right of access to justice, enshrined in Article 6 of the European Convention on Human Rights, is an essential feature of democratic societies. The establishment of a well-functioning legal aid system is of great importance for the effective access to justice by individuals with economic constraints. The Commissioner remains concerned by the shortcomings in the implementation of the legal aid legislation, notably as concerns the work of the State Commission for Legal Aid. He calls on the authorities to address all outstanding issues in this regard in close co-operation with civil society whose extensive experience and committed work in this field are highly appreciated.
106. Lastly, while the 2013 amendments to the Law on Legal Aid concerning exemption from the payment of court fees is a step forward, the Commissioner is concerned that due to the limited scope of beneficiaries envisaged by this amendment persons belonging to socially vulnerable groups may still be prevented from pursuing their rights in civil proceedings because of economic constraints. The authorities should, therefore, step up their efforts aimed at effectively addressing this issue. District and appeal judges need to be provided with clear guidance which would help them in the implementation of the 2013 Constitutional Court decision concerning the

legal provisions providing for the exemption from the payment of the court fees. This guidance could be provided by the Supreme Court in close consultation with the Constitutional Court.

II. The role of law enforcement authorities in the protection of human rights

1. *Ill-treatment by law enforcement agents*

107. Law enforcement officials, tasked with the protection of citizens and their human rights, are constituent parts of the rule of law that should reign in a democratic state. It is therefore essential for member states to effectively combat impunity in this domain, so that victims receive reparation, future misconduct by law enforcement officials is deterred and public trust in and co-operation with law enforcement authorities is strengthened.
108. In this context, the Commissioner has noted with satisfaction the determination shown by the Minister of Interior, Mr Saimir Tahiri, to eradicate and prevent unlawful activities and corruption in law enforcement authorities. This was reflected in the recent dismissal of 81 out of the 105 staff members of the traffic police office in Tirana, and the initiation of criminal proceedings against 11 of them, following an *in situ* investigation that revealed notably the keeping by traffic police staff of double fine receipt books.
109. In the 2008 report on Albania by the former Commissioner it was noted that “the legal and organisational measures taken so far to prevent torture and ill-treatment were not sufficient to significantly reduce the number of allegations of excessive use of force by the police at the moment of apprehension and ill-treatment or abuse during arrest or questioning; those remain frequent and continue to feature prominently in reports by both international and national human rights organisations. The failure to investigate and prosecute allegations of ill-treatment effectively and efficiently continues to contribute to a climate of impunity”.
110. Human rights violations committed by law enforcement officials in Albania have long been reported by the CPT and the UN Committee Against Torture (UN CAT). The human rights violations committed in the aftermath of the violent events of 21 January 2011 in Tirana have brought to light a number of systemic problems in the country’s law enforcement system that require serious reflection and sustained action by the Albanian authorities.
111. In its [2012 report, following the 2010 visit to Albania](#), the CPT reported that it had received a significant number of allegations of physical ill-treatment of criminal suspects by the police. The allegations related mostly to ill-treatment inflicted at the time of questioning with a view to obtaining a confession or extracting information. The CPT also expressed concerns about the many, consistent allegations of ill-treatment received from young persons, including allegations of psychological ill-treatment. The CPT made a number of recommendations in this regard, notably in relation to detainees’ access to a lawyer and a medical doctor, notification to detainees of their rights, keeping of records during detention, and specific issues related to juveniles.
112. In 2012, UN CAT also expressed its deep concern at reports indicating that basic safeguards against ill-treatment during pre-trial detention in Albania were still not applied systematically and effectively⁴¹. It noted that detainees were not always fully informed of their rights from the outset of their deprivation of liberty, were deprived of timely access to a lawyer and a medical doctor and of the right to notify a family member or person of one’s choice of an arrest and current place of detention, and were often not brought before a judge within the constitutionally prescribed periods.
113. The Albanian Ombudsman, in his capacity as National Preventive Mechanism (NPM), noted in his [2012 annual report](#)⁴² that in the respective year there was an almost two-fold increase in the number of complaints it received against the police, compared to 2011 (234 and 119 respectively). More specifically, in 2012 out of the 234 police-related complaints received by the

⁴¹UN CAT, “2012 Concluding Observations on Albania”, paragraph 13.

⁴²See, 2012 NPM Annual Report, pp. 56-57.

NPM, 71 related to ill-treatment, including torture. The NPM submitted 26 recommendations to the relevant authorities, concerning 77 police officers, requesting that criminal and/or disciplinary proceedings be initiated. The Commissioner has noted that the lack of effective and efficient implementation of the NPM's recommendations concerning ill-treatment and conditions of detention was highlighted in the aforementioned annual report.

114. Ill-treatment by law enforcement agents has also been reported to international human rights bodies by expert NGOs. For example, the Albanian Rehabilitation Centre for Trauma and Torture reported about this problem extensively in its 2012 alternative report to UN CAT. In its 2012 monitoring report,⁴³ the European Institute of Tirana noted allegations of physical and psychological ill-treatment, including against juveniles, in 7 out of 17 pre-trial detention institutions visited by this NGO in 2012. One of the cases concerned a juvenile in the Kavaja Reintegration Centre for Juveniles who was allegedly beaten up for ten minutes while his hands were handcuffed. The juveniles who witnessed the beating admitted that they had not complained out of fear of ill-treatment⁴⁴. All the juveniles in this institution reported that the use of batons by law enforcement officers was a common practice, a problem noted earlier by the CPT. Cases of discrimination and physical violence against Roma detainees have also been reported.
115. In 2012 the CPT recommended that the Albanian authorities pursue vigorously their efforts to combat all forms of ill-treatment by the police. It stressed that all police officers should be reminded, at regular intervals, that any form of ill-treatment of detainees is not acceptable and anybody involved in such acts should be punished accordingly. In addition, greater emphasis should be given to modern, scientific methods of criminal investigation, through appropriate investment in equipment and skilled human resources, so as to reduce the reliance on confessions to secure convictions.
116. In its aforementioned 2012 annual report, the Albanian NPM noted that there was a need for continuous training of law enforcement officers on how to treat persons deprived of liberty, including the obligation to inform persons under arrest of their rights immediately upon arrest. The NPM stressed that the registers on deprivation of liberty need to be standardised and should contain all information concerning the deprivation of liberty, notably the time and reason thereof, the physical state of the person (particularly whether there are any visible signs of physical injury), and information as to whether access to a lawyer and a medical doctor has been provided. Both the CPT and the NPM have stressed that surveillance systems should be installed as one of the measures to prevent ill-treatment in detention.
117. In their discussions with the Commissioner, NGOs highlighted the lack of psychologists in police stations, who could provide adequate psychological help especially to juvenile detainees. The NPM has noted the same problem and recommended to the General State Police Directorate to adopt the necessary measures in order to ensure that psychologists and a lawyer are always present at proceedings involving juveniles, in compliance with the relevant provisions of the Criminal Procedure Code.⁴⁵
118. The Commissioner notes that one of the key priorities set by Albania in the context of the EU accession process⁴⁶ concerns measures that need to be taken to improve the treatment of detainees and to ensure judicial follow-up of cases of ill-treatment. In May 2012, the government updated its action plan for the period 2012-2015 which outlines a list of measures to be taken in this regard, including the improvement of the legal framework for the treatment of inmates or remand prisoners, as well as of the legislation relating to the penitentiary and the police.
119. The Commissioner has noted that in December 2009 a "Manual on the Treatment of Persons in Police Custody" was approved by the Director General of the State Police. The manual covers a wide range of issues concerning custody by the police, such as the procedures for admission to

⁴³European Institute of Tirana, "Enhancing Access to the Justice System in Albania: Human Rights Protection in the Pre-trial Detention System", 2012 Monitoring report, p. 41.

⁴⁴Ibid., p.105.

⁴⁵Articles 35, 37, 48 and 296/1 of the Criminal Procedure Code.

⁴⁶EC " [2010 Commission Opinion on Albania's application for membership of the European Union](#)", p.12.

police custody cells (including mandatory medical checks), the rights and obligations of detainees during their stay in these facilities, conditions of detention therein, access to health care during police custody, technical parameters and layout of custody cells, the keeping of custody records and so on. In its 2012 report on Albania the CPT noted that most of the staff (including senior officers) met by the delegation at local police stations had no knowledge of this manual's existence, let alone its requirements. The Commissioner was informed that training sessions for law enforcement officials have been organised by the authorities in order to familiarise them with the contents of the manual. Nonetheless, information brought to the attention of the Commissioner during his visit indicates that there is a need for further training in this context.

120. As regards measures to prevent ill-treatment, according to information provided to the Commissioner by the Minister of Interior, Mr Saimir Tahiri, there will be a general evaluation of the law-enforcement sector aimed at assessing the situation and developing concrete measures to address the shortcomings. This evaluation will include inspections of all police stations, including detention facilities. The Commissioner was also informed about the authorities' plan to install surveillance cameras in places of detention. He noted the measures taken in order to fight corruption in the police, notably the aforementioned dismissal of 81 traffic police officers in Tirana. Moreover, following his visit certain measures of restructuring of the police have indeed been taken by the authorities. The Commissioner encourages the authorities to pursue reforms in the law enforcement sector, ensuring that in this process the principles of the rule of law and respect for human rights are fully upheld.

2. Effective investigation in cases concerning human rights violations by law enforcement officials

121. Public confidence in law enforcement authorities is closely related to their attitude and behaviour towards the public, in particular their respect for human dignity and human rights and fundamental freedoms, as enshrined in the ECHR. The Commissioner strongly believes that it is essential for the authorities to ensure that all instances of abuse of trust or ill-treatment by law enforcement officials are firmly condemned, adequately investigated and sanctioned by the competent authorities, in order to prevent recurrence and enhance the key role played by law enforcement authorities in safeguarding the rule of law.
122. Of particular relevance to this end are the [2011 Guidelines](#) of the Committee of Ministers on eradicating impunity for serious human rights violations, which provide that "States are to combat impunity as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system".
123. The Commissioner also recalls the established case-law of the European Court of Human Rights, according to which the failure of a state to conduct an effective official investigation where "an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents" constitutes a violation of the ECHR. Such an investigation should be capable of leading to the identification and punishment of those responsible, without which the general prohibition of torture and other forms of ill-treatment would be ineffective in practice and lead to abuses with virtual impunity.
124. In its 2013 judgment in the case of *Kaçiu and Kotorri*,⁴⁷ concerning, *inter alia*, the torture by the police of one applicant during interrogation, the Court found Albania to be in violation of Article 3 of the ECHR. The Court noted that the applicant's beating was of such severity that he had to be carried to the court room by police officers. The Court added that even though the domestic authorities were made aware of the applicant being beaten, the prosecutor did not take any steps to investigate the applicant's repeated and serious allegations. Moreover, the judge at the initial hearing did not request that the applicant's clear physical discomfort be investigated, even though the applicant could not stand or walk.

⁴⁷*Kaçiu and Kotorri v. Albania*, judgment of 25 June 2013, paragraphs 97-100.

125. The Commissioner notes with serious concern the apparent lack of effective investigations into and prosecution of cases of serious human rights violations committed by law enforcement officials. According to information provided by the authorities, only one criminal proceeding relating to the criminal offence of torture⁴⁸ was initiated in 2012, and was eventually dismissed in court, while in 2013 no such proceedings were recorded. The Commissioner learned with concern that there is a pattern of classifying reported acts of ill-treatment, including torture, committed by law enforcement officials as criminal offences of “abuse of power” or “commission of arbitrary acts”, under Articles 248 and 250 of the Criminal Code respectively. In 2012 UN CAT called on the authorities to refrain from this practice.⁴⁹
126. The official data provided by the authorities following the Commissioner's visit seem to confirm the aforementioned pattern. More specifically, 31 criminal proceedings relating to police misconduct in 2012 came under Article 250 of the Criminal Code. In 18 out of 31 cases, criminal charges were dismissed at the investigation phase. Out of 16 cases of law enforcement officials accused of this criminal offence in 2012, only three received prison sentences, while seven of them were fined. In 2013, 11 criminal proceedings against law enforcement official were initiated in relation to the aforementioned criminal offence.
127. In its 2012 report on Albania, the CPT reported a lack of effective investigation of ill-treatment claims even when reported to a judge. The CPT has stressed that whenever criminal suspects brought before judicial authorities allege ill-treatment, the allegations should be recorded in writing, a forensic medical examination (including, if appropriate, by a forensic psychiatrist) immediately ordered, and the necessary steps taken to ensure that the allegations are properly investigated. Such an approach should be followed irrespective of whether or not the person concerned bears visible injuries. Furthermore, even in the absence of an express allegation of ill-treatment, a forensic medical examination should be requested by the competent authorities whenever there are other grounds to believe that the person could have been a victim of ill-treatment.

3. *Lack of effective investigation in cases of human rights violations committed during and in the aftermath of the events of 21 January*

128. The violent events of 21 January 2011 in Tirana, during which four persons were killed and several dozens of demonstrators and law enforcement officers were injured, brought to light certain serious shortcomings in the law enforcement sector that remain to be effectively addressed by the authorities. The Commissioner emphasises that this remains a major, rule of law-related test case that is closely followed by the international community.
129. The Commissioner notes with concern that the serious human rights violations committed during and in the aftermath of these events have not yet been effectively addressed. These issues were examined in a special report following the visit of the Commissioner's predecessor to Albania, where it was noted that 113 individuals were arrested in relation to the events and placed in detention. The report noted cases of serious ill-treatment by the police, as well as the lack of access by apprehended persons to a lawyer, a medical doctor, and contact with family members. It was also noted that the police refused to execute the General Prosecutor's detention orders with regard to six senior officers of the Guard of the Republic with a view to taking their statements in relation to the events of 21 January.
130. The Commissioner's predecessor stressed the need for thorough, impartial and credible investigations into the human rights violations, and that those responsible for the violent acts and human rights violations should be held to account. One of his recommendations concerned the need to improve crowd control mechanisms.

⁴⁸ In 2007 the definition of torture contained in Article 86 of the Criminal Code was fully aligned with Article 1 of the UN CAT.

⁴⁹ UN CAT, "Concluding Observations on Albania", June 2012, paragraph 8.

131. The Commissioner discussed the aforementioned issues with the authorities during his 2012 visit to Albania, as well as during this last visit. In 2012 the Commissioner was informed about some of the measures taken by the authorities in order to implement the 2011 recommendations made by the former Commissioner. These measures included amendments to the curricula of police staff training, concerning action and reaction in cases of massive arrests. The Commissioner was also informed that the authorities earmarked €1.8 million for the State Police in order to improve its capacity and efficiency, and equipment has been modernised in the context of this investment.
132. While noting that the aforementioned measures are important for preventing events like those of 21 January 2011, the Commissioner remains concerned that the allegations of serious human rights violations committed during and in the aftermath of these events have not yet been fully and effectively addressed. He has noted that to date only two law enforcement officials have been found guilty of involuntary manslaughter, while an investigation into human rights violations involving other security officials was dropped due to lack of evidence.
133. The Commissioner was informed by the authorities that the on-going criminal investigation of ill-treatment of demonstrators by law enforcement officials is very complex due to the large number of investigative acts to be carried out. According to the authorities, this investigation is carried out in relation to the aforementioned criminal offences of “abuse of power” or “commission of arbitrary acts”, under Articles 148 and 250 of the Criminal Code.
134. Furthermore, there appears to be a lack of effective investigation and prosecution, including against higher-ranking officials, who had been involved in tampering with evidence during the criminal investigation. A computer specialist of the government was charged with manipulating the recordings of security cameras during the criminal investigation, in order to hide evidence, while those who ordered this manipulation have not been brought to justice. Furthermore, no measures have reportedly been taken against law enforcement officials who refused to execute the arrest order issued in 2011 by the General Prosecutor, which seriously hampered the criminal investigation into the killings.
135. In this context, the Commissioner recalls the [2011 Guidelines](#) of the Council of Europe Committee of Ministers on eradicating impunity for serious human rights violations, which provide that although there is no right guaranteeing the prosecution or conviction of a particular person, prosecuting authorities must, where the facts warrant this, take the necessary steps to bring those who have committed serious human rights violations to justice.
136. He urges the authorities to take the necessary measures to ensure that all allegations of ill-treatment by law enforcement authorities committed during and in the aftermath of the events of 21 January 2011 are promptly and effectively investigated, and that those who committed these violations are brought to justice. In this context, he stresses the need to vigorously fight impunity and impose dissuasive penalties on offenders involved in serious human rights violations, in line with the 2011 Guidelines of the Council of Europe Committee of Ministers on eradicating impunity for serious human rights violations.

4. Detainees' access to adequate medical care

137. In 2012 UN CAT expressed its deep concern at reports that basic safeguards against ill-treatment during pre-trial detention are still not applied systematically and effectively, as detainees are deprived of timely access to a medical doctor⁵⁰. It called on the authorities to provide regular training to police officers on the legal obligation to grant access to a medical doctor from the very outset of a person's deprivation of liberty.
138. The Commissioner notes that the aforementioned 2009 manual provides for a systematic medical examination of detainees upon admission to police custody. The manual provides that every detainee shall be subject to a medical check-up by a doctor prior to their placement in a custody cell; in special cases, such examinations may be performed at a later stage, but no later

⁵⁰UN CAT, “2012 Concluding Observations on Albania”, paragraph 13.

than 24 hours from the moment of apprehension. In this connection, the manual provides that in addition to the medical check at the outset of custody, detainees should be “provided with additional medical assistance upon request and based on the problems identified by the personnel.” In 2012, the CPT noted that if duly implemented, these provisions of the manual – coupled with proper medical screening on admission to remand facilities – may well constitute an important safeguard against ill-treatment by the police.

139. The Commissioner notes with concern that there appear to exist shortcomings in the implementation of the 2009 manual. In its 2012 annual report, the NPM recommended that the authorities take immediate measures in order to ensure that the provisions of the 2009 manual relating to access to a medical doctor are used in practice. It emphasised that access to a medical doctor should be provided immediately upon arrest, and no later than 24 hours after that.
140. The Commissioner also notes that the Council of Europe Committee of Ministers is currently supervising, under the ‘enhanced procedure’, the execution by Albania of two Court judgments relating to violations of Article 3 of ECHR due to lack of access by persons deprived of liberty to adequate medical care. These cases concern the lack of appropriate medical treatment that was afforded to prisoners who were seriously ill. In the case of *Dybeku*,⁵¹ the Court indicated that necessary measures should be taken as a matter of urgency in order to secure appropriate conditions of detention and adequate medical treatment, in particular for prisoners who need special care owing to their state of health. The case of *Groni*⁵² also concerns an unjustified delay in complying with the indication by the Court of an interim measure ordering the applicant’s transfer to a civilian hospital.
141. In the decision adopted in March 2013 following the latest examination of the two aforementioned cases, the Committee of Ministers deplored that, having regard to the age of the cases and the seriousness of the violations at issue, the authorities had not yet submitted detailed information on the measures taken to ensure that the applicants, as well as all other detainees, would in the future be able to access the medical treatment necessary for their state of health. The Committee of Ministers recalled the action plan of the authorities submitted in November 2011 which referred to legislative amendments under way with a view to responding to the findings of the Court. However, no additional information has been submitted since then. It also urged the Albanian authorities to submit, without any further delay, an updated action plan containing all the missing information including, in particular, detailed information on the legal regime and practice governing the availability of medical treatment for detainees, so as to enable the Committee of Ministers to assess the status of execution of these two judgments as soon as possible.

5. Detainees’ access to a lawyer

142. The Commissioner recalls that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated, in light of the particular circumstances of each case, that there are compelling reasons to restrict this right.⁵³
143. The Commissioner has noted with concern that cases continue to be reported where access to a lawyer by persons charged with criminal offences and deprived of liberty is denied or delayed. This problem has been noted by the CPT since 1997. In its 2012 report on Albania the CPT stressed that, even though it had noted a significant increase in the number of persons enjoying access to a lawyer while in police custody, it heard allegations to the effect that police officers delayed access to a lawyer, in order to informally question the person concerned without the presence of a lawyer, prior to the taking of a formal statement (in the presence of a lawyer). It also noted that a number of detainees indicated that, despite having asked for an *ex officio* lawyer immediately after apprehension, their first contact with the lawyer took place only at the initial court appearance.

⁵¹*Dybeku v. Albania*, judgment of 18 December 2007.

⁵²*Groni v. Albania*, judgment of 7 July 2009.

⁵³See, for example, the Court’s judgment in the case of *Salduz v. Turkey*, 27 November 2008, paragraph 55.

144. The Commissioner is seriously concerned about allegations that juveniles are often subject to police interrogation without the presence of a lawyer or a parent, while in a few reported cases they have also been made to sign statements. This problem was noted by the CPT which recommended in 2012 that the Albanian authorities take steps to ensure that juveniles deprived of their liberty by the police do not make any statement or sign any document without the benefit of a lawyer, and ideally another trusted adult being present to assist them.
145. In the aforementioned 2012 annual report, the NPM noted several cases of minors in police detention who have not been provided with access to a lawyer and psychological assistance. In its Concluding Observations on Albania published in 2013, the UN HRC also called on the authorities to ensure immediate access to a lawyer following arrest, and that all persons detained by the police are brought before a judge within the constitutionally prescribed periods.

6. Excessive resort to and length of remand in custody

146. The Commissioner recalls the Council of Europe Committee of Ministers' [Recommendation Rec\(2006\)13](#) on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, which provides that the use of remand in custody must always be exceptional and justified. It is crucial to safeguard the principle of presumption of innocence and bear in mind that the only justification for detaining persons whose guilt has not been established by a court can be to ensure that the investigations are effective (securing all the available evidence, preventing collusion and interference with witnesses) or that they do not abscond. Where less restrictive alternative measures (such as judicial control, release on bail or bans on leaving the country) could address these concerns, they must be used instead of remand in custody. In any event, remand in custody must be as short as possible and only continue for as long as it is justified.
147. The Commissioner notes that the number of individuals kept in pre-trial detention in Albania appears to be very high. As of September 2013, out of 4 879 persons detained in 18 pre-trial sections and 21 detention facilities and prisons, 1 948 were persons in pre-trial detention.⁵⁴ The Commissioner has noted reports indicating that court decisions authorising detention in custody continue to be case non-specific, contrary to the Court's case-law.⁵⁵ Moreover, domestic courts often fail to take into account existing alternative, non-custodial restrictions on personal freedom, such as bans on leaving the country, release on bail or judicial controls.
148. It is of particular concern to the Commissioner that the measure of pre-trial detention is used excessively for juveniles. According to information provided by UNICEF during the Commissioner's visit, in a large number of cases juveniles have served their sentence under pre-trial detention due to delayed proceedings in court. The Commissioner draws the authorities' particular attention to Article 37(b) of the Convention on the Rights of the Child, ratified by and binding on Albania, which provides that states parties should ensure that no child is deprived of his or her liberty unlawfully or arbitrarily and that any arrest, detention or imprisonment of a child shall be in accordance with the law and shall be used only as a measure of last resort.

7. The need for an independent complaints mechanism concerning actions by law enforcement authorities

149. The Commissioner believes that the most effective way of combating impunity among members of law enforcement forces is to establish an effective and independent complaints mechanism. This is in line with the [European Code of Police Ethics](#), which provides that "public authorities shall ensure effective and impartial procedures for complaints against the police" and that "the

⁵⁴Albanian Rehabilitation Centre for Trauma and Torture, Alternative Report to the Second Universal Periodic Review on Albania of the UN High Commissioner for Human Rights, September 2013, p. 5.

⁵⁵See, for example, the Court's judgment in the case of *Cahit Demirel v. Turkey*, 7 July 2009, paragraph 45. The Court found Turkey in violation of the ECHR noting that domestic courts ordered the applicants' continued detention pending trial using identical, stereotyped terms, such as "having regard to the nature of the offence, the state of the evidence and the content of the file."

accountability mechanisms, based on communication and mutual understanding between the public and the police shall be promoted”.

150. In 2012, UN CAT expressed its concern in relation to information that alleged victims of ill-treatment by the police were not aware of complaint procedures beyond reporting their complaints to the police, which in some cases had refused to accept complaints concerning misconduct by the police⁵⁶. It also expressed concerns regarding the reported cases of ill-treatment of persons in a vulnerable situation who have declined to file complaints against the police out of fear of counter-complaints by the police or other forms of reprisals.
151. The Commissioner notes that internal investigation mechanisms already exist in Albania, in order to tackle cases of abuse committed by members of law enforcement authorities. Victims of ill-treatment can also lodge complaints with the Ombudsman, who also hosts the National Preventive Mechanism against Torture. However, the Ombudsman can only make recommendations to the administration and cannot impose sanctions.
152. The Commissioner stresses that such mechanisms, although necessary for imposing disciplinary sanctions, are not sufficient to ensure the adequate sanctioning of all instances of abuse by law-enforcement officials, the prevention of recurrence and effective redress for victims of abuse. Moreover, according to information provided by the authorities to the Commissioner the existing internal investigation mechanism has proved inefficient and will be reformed. The Commissioner would like to stress that it is for the Albanian authorities to determine which option best fits the Albanian legal system and tradition, bearing in mind that any complaints mechanism should be in line with the principles noted in the [Commissioner's Opinion concerning Independent and Effective Determination of Complaints against the Police of 2009](#).

8. The work of the National Preventive Mechanism

153. As concerns the functioning of the NPM, in its 2012 concluding observations⁵⁷ UN CAT expressed concerns at the lack of professional staff, financial resources and methodological resources to carry out its functions effectively and independently. The Ombudsman's office has been adversely affected by a significant decrease in funds, which has resulted in limiting the operational capacity of this institution, notably as concerns the hiring of a specialist that would strengthen the quality of reports and recommendations. Moreover, despite some improvements, the problem of the administration's non-compliance with the Ombudsman's recommendations persists.
154. The Commissioner has noted the existence of divergent opinions in Albania as regards the operational form of the NPM. While some of his interlocutors have praised the current NPM, noting that the provision of adequate financial means would render his work more effective, others suggested that it would be good to introduce in Albania the 'ombudsman plus'⁵⁸ model, which exists in some European countries. The Commissioner also noted opinions that more NGOs should be consulted by and involved in the NPM's work.
155. While noting that it is for a member state to the OPCAT to choose the NPM model which best fits its context, the Commissioner reminds the authorities that the OPCAT calls on member states to: guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel; take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge; and undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
156. Lastly, the Commissioner notes with interest that, upon the initiative of the Albanian Ombudsman, in 2013 a South East European network of NPMs was established, having its seat

⁵⁶ See UN CAT, "2012 Concluding Observations on Albania", paragraph 20.

⁵⁷ UN CAT "2012 concluding observations on Albania", paragraph 11.

⁵⁸ In the countries which have this model the ombudsman is designated as the NPM, but it carries out the NPM functions in collaboration with NGOs and civil society organisations.

in Belgrade, Serbia. The main purpose of this network is to establish co-operation and synergy between regional NPMs, and to create an avenue for exchanges of experience.

Conclusions and recommendations

157. The Commissioner draws the authorities' attention to the Council of Europe Committee of Ministers 2011 Guidelines on eradicating impunity for serious human rights violations and to the section on "Combating impunity" of the [CPT's 14th general report](#), and stresses the need for all states to elaborate policies and practices to prevent and combat any institutional culture within or outside law enforcement authorities which promotes impunity. Measures in this context should include a policy, adhered to by all law enforcement and other competent authorities, of zero tolerance towards serious human rights violations, the introduction of anti-corruption policies and the establishment or reinforcement of appropriate training and control mechanisms, in line with the Council of Europe Committee of Ministers' Recommendation on the [European Code of Police Ethics](#). The authorities are also urged to undertake measures to raise awareness among judges and prosecutors of their duty to note and thoroughly investigate all allegations of ill-treatment by law enforcement officials, in line with the case-law of the European Court of Human Rights.
158. The Commissioner notes that instances of ill-treatment by law enforcement officers in Albania often appear to be related to an over-emphasis on confessions during criminal investigations. He calls on the authorities to apply the recommendations issued by the CPT, notably as regards careful selection at the recruitment stage as well as appropriate training (both initial and on-going) of police officers, prosecutors and judges. The Albanian authorities can usefully draw on the Council of Europe's expertise in this domain.
159. The Commissioner wishes to recall that, for an investigation into possible ill-treatment to be effective, it should comply with the five following principles: (a) *independence*: there should be no institutional or hierarchical connections between the investigators and the official complained against and there should be practical independence; (b) *adequacy*: the investigation should be capable of gathering evidence to determine whether the police behaviour complained of was unlawful and to identify and punish those responsible; (c) *promptness*: the investigation should be conducted promptly and in an expeditious manner, in order to maintain confidence in the rule of law; (d) *public scrutiny*: procedures and decision-making should be open and transparent, in order to ensure accountability; and (e) *victim involvement*: the complainant should be involved in the complaints process, in order to safeguard his or her legitimate interests.
160. The Commissioner urges the Albanian authorities to take all necessary measures to ensure that all allegations of ill-treatment by law enforcement officers committed during and in the aftermath of the events of 21 January are promptly and effectively investigated, and that those who committed these violations are brought to justice. In this context, he stresses the need to vigorously fight impunity and impose dissuasive penalties on offenders involved in serious human rights violations, in line with the [2011 Guidelines](#) of the Committee of Ministers on eradicating impunity for serious human rights violations.
161. The Commissioner urges the authorities to give effect to the recommendations issued by the CPT, notably as regards the possibility for detainees to be visited by a lawyer and a medical doctor of their choice, to have their detention and their whereabouts notified to their families and to have 24-hour video surveillance and recording of the detention areas. The Commissioner also urges the authorities to take all necessary measures in order to ensure that psychologists are always present during proceedings involving juveniles.
162. The Commissioner is concerned by over-reliance on remand in custody or during trial. He urges the Albanian authorities to ensure that custody in remand is used only as a last resort, notably as concerns juveniles. Judges and prosecutors should be strongly encouraged to apply alternatives to detention and should receive appropriate training and further assistance, having regard to the Council of Europe standards, in particular the case-law of the European Court of Human Rights. Decisions to impose or extend remand in custody should be duly reasoned and based on the merits of the individual case.

163. The Commissioner invites the authorities to provide adequate conditions for the effective functioning of the National Preventive Mechanism, in line with the standards contained in the Optional Protocol to the Convention Against Torture.
164. Lastly, the Commissioner invites the Albanian authorities to consider establishing an independent complaints mechanism covering all law enforcement officials in line with the [Commissioner's Opinion concerning Independent and Effective Determination of Complaints against the Police of 2009](#). The Council of Europe can provide useful examples from other member states and guidance in this domain.